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Reforming the Egyptian Personal Status Laws. A case for Islamic feminism

Sara Abdel Ghany and Azza Soliman

Introduction

The personal status law (PSL), also known as the family law code, of Egypt plays an essential role in defining, framing, and controlling socio-economic relations and gender dynamics in the country. By delineating the framework of marriage, divorce, custody, and inheritance through a rigid patriarchal hierarchy, the law determines the rights and duties of citizens toward each other in their everyday life. The PSL is based on the codification of Islamic jurisprudence, mostly from the Hanafi School, on all issues related to marriage, divorce, inheritance, and child custody. Islamic jurisprudence, including the Hanafi School, sustains a hierarchical regime of gendered spousal roles and rights to the advantage of the husband and the father in the family.

The main conceptual principle for this regime is based on the inherent male right to guardianship and authority, or *wilayah* and *qiwamah*, respectively. Through a marriage contract, a husband is under the obligation to financially provide for his family, and his wife and children must obey him. Consequently, the right of the husband to wifely obedience (*ta'a*) is conditioned by his financial role in spousal maintenance, or *nafaqa* (Al-Sharmani, 2014, pp. 13-14). Wifely obedience is when the wife “places, or offers to place, herself in the husband’s power so as to allow him free access to herself at all lawful times” and “obeys all his lawful commands for the duration of marriage” (Nasir, 1990, p. 90). Also, as the financial obligation to provide falls solely on the husband, there are no communal household assets: both the wife and the husband individually retain their assets, possessions, and properties. Finally, based on the gendered system of guardianship and obedience, husbands have the exclusive rights to divorce, polygamy, and guardianship over their children (Abu-Odeh, 2004).

This policy brief uses a gender legal analysis to examine the Egyptian PSLs, with a focus on its historical origins, as well as legislation itself, its modification, and scholarly analysis. Through this gendered legal analysis we aim to demonstrate how the legal system might be reformed to include gender equality and justice. By drawing on holy Islamic texts, Islamic feminism can be a strong tool not only for transforming the change-resistant PSL (the legal framework of the private sphere), but, more importantly, Islamic feminism can be a powerful tool for weakening the foundation of the public/private dichotomy that imprisons women in a distorted citizenship, paving the way for a more just society for all. Obviously, the legal focus of this policy brief means that other areas that may be relevant for policy-making, notably Egypt's economic and social structures, are given less attention. Our recommendations relate primarily to the legal sector, but also involve non-legal actors such as parliamentarians.

The Emergence and Development of the Personal Status Law

The personal status law, written in 1929, is based on a hierarchal, medieval structure of governance that has meant the controlling of Egyptian women, to the advantage of men, in both the public and private spheres. Even though there have been many reforms, both judicial and legislative, they have only touched the periphery of the structure of discrimination and violence that is at the core of the PSL, without actually challenging this foundation. The PSL was strategically excluded from the process of modernization and secularization of the law. With limited power and jurisdiction, the religious elite held tightly to their authority over the PSL. The ruling elite, in return, controlled this contentious battle by preserving the patriarchal system of the family, and only cautiously limiting the absolute powers granted to men under that system, reforming only “the outer limits of the law”:

In order for family law to be legislatively reformed, progressively interpreted by secular judges, or actively protected by elite constitutional judges, the outer limits have to be

convincingly defined for a difficult-to-please religious audience. It is through making patriarchal pronouncements on the outer limits that the “reformer” gains legitimacy for his or her reforms in the eyes of watchful religious contenders. (Abu-Odeh 2004)

Therefore, even though women were guaranteed political and economic rights by the 1956 Constitution, and were actively encouraged to take part in the public life of the new welfare state, the 1920 family law remained unchanged. This anomalous politico–legal system was sustained for over six decades under different presidential systems, each with strikingly different political ideologies.

The Egyptian State was able to construct a modern secular identity while also preserving its patriarchal structure. By defining the private realms as the domain of Islam, in other words, defining the private realms as the sacred realm in which the secular State cannot interfere, the State ensured the immunity of the private sphere from any changes occurring in the public. Furthermore, even though it only sought to change the “outer limits” of the patriarchal legal code governing the private sphere, it established its identity as the modernizer fighting against the traditionalists and religious institutions for women’s rights.

The History of Change

A number of attempts to reform Egypt’s PSL have been initiated since its codification. However, none of them succeeded in bringing gender justice to the system. This section briefly outlines some of those reforms and attempted changes.

- The calls for reform to jurisprudence regarding the PSL started in the beginning of the 20th century as part of an Islamic reformist movement. The movement was led by prominent political activists and Islamic ideologues, most importantly Sheikh Mohammed Abduh, who was one of the key founders of Islamic Modernism. Abduh’s writings and teachings offered a new vision to the definition of the marriage institution,

the connection between husband and wife, and their duties and obligations towards one another. For example, he opposed the idea that the marriage contract reflects a man's sexual ownership of a woman. He stated that the idea of marriage in Islam is the most civilized concept that ever existed, as it reflects the Qur'anic principles of mercy, compassion, affection, and tranquility. Abduh also opposed polygamy as it is against what he argued to be the constituting condition placed in the Qur'anic text for marriage, which is justice.

- In 1915, a committee of senior religious scholars representing the four schools of Sunni Islamic jurisprudence (Hanafi, Maliki, Shafii, and Hanbali) was established to create a family code. The committee hoped to extract the jurisprudence, from any of the four schools, that represented the well-being of society, and was compatible with modern society. It succeeded in producing a list according to these criteria. However, the committee's work was heavily criticized by judges, lawyers, and Islamic jurisprudence experts, and they were never able to produce an updated family code (Abu Zahra, 1995).
- Alongside Islamic Modernists, Egyptian scholars and activists led the feminist movement in the region. The feminist movement, like the Islamic Modernism Movement, advocated for better personal status jurisprudence for women. For example, Malak Hifni Nasif (1886–1918), an Egyptian feminist, Islamic modernist, and writer, was vocal against the injustice of the divorce and polygyny systems, and called for the reform of the PSL. Another example, Huda Shaarawi (1879–1947), the pioneer who created a social revolution in Egypt and the region, advocated in 1921 for the minimum age of marriage to be 16 for girls, and 18 for boys, as well as restricting men's absolute powers of divorce. Furthermore, in 1923, Shaarawi established the Egyptian Feminist Union, which advocated for women's suffrage, reforms to PSLs, and increased educational opportunities for girls and women (cf. Hawkins, 2018).

- In 1926, at the peak of the religious reform movement, a committee of religious scholars, mainly students of Sheikh Mohammad Abduh, came up with a set of recommendations for reforming the PSL. Interestingly, the committee did not restrict itself to the four schools of Sunni Islamic jurisprudence, but borrowed from general jurisprudence that they claimed reflected the well-being of the family. Unsurprisingly, the recommendations, which were based on the Qu’ran and sunna, did not completely comply with existing jurisprudence. The recommendations were consequently rejected, and Law No. 25 of the year 1929 (the current PSL) included only the jurisprudence of the four schools, mostly borrowing from the Hanafi school of jurisprudence.

The following are examples of some of the recommendations that diverged from the existing jurisprudence:

1. To restrict polygamy, the committee demanded that the second marriage must be approved by a judge. The judge can only approve the second marriage if the claimant can prove an amiable marriage relationship all his wives, and ensure they are financially supported.
 2. The committee demanded that the husband must abide by all the conditions stipulated by the wife upon entering a marriage contract, including the right to demand the husband does not marry another.
 3. The committee gave the right to divorce to the wife for any damage caused by the marriage.
- The PSL was not influenced by either the Islamic Modernism Movement or the Feminist Movement, and was strategically sacrificed by the State-led Modernization Movement. In Egypt’s era of modernization, during the second half of the nineteenth century, the State abandoned the Islamic legal system for a modern and secular legal code. The

Egyptian family law code, however, was not part of the newly secularized law, even though it was an essential component. In order to appease an audience skeptical of the Europeanization and secularization of the law, modernists abandoned attempts to reform the family law. Lama Abu-Odeh states that family law historically presented “the limit of, the exception to, or the sacrificial lamb of secularization” (2004). Similarly, Talal Asad describes family law as, “the expression of a secular formula, defining a place in which ‘religion’ is allowed to make its public appearance through state law” (McLarney, 2016, p. 19). The public appearance of religion through the PSL ensured legislators the confinement of religion to the private realms. Accordingly, the design and construction of the Egyptian legal framework was grounded on a clear distinction between the public, the embodiment of the state’s identity of modernity and secularization, and the private, the state’s giveaway to the traditional and the religious.

- Legal reforms to the Hanafi-based PSL have aimed to cautiously limit the periphery of men’s absolute powers under the jurisdiction. For example, in contrast to the denial of women’s right to divorce according to the Hanafi school, Law 25 of 1929 allows women to be granted a divorce if they prove that the marriage, or the husband, is causing them harm impossible for them to tolerate. If they have failed to prove harm, but continue to demand divorce, Law 100 of 1985 demands judges to divorce them. Similarly, the Hanafi categorization of working women as “disobedient” is challenged under law, by providing that she is only “disobedient” if her work is an “abuse of right,” “contrary to the interests of the family,” and her husband asked her not to work. Furthermore, in 1967, the practice of using the police to enforce obedience judgments by forcefully returning women who chose to leave their marital home was abolished. However, obedience itself remains a legal duty that wives owe their husbands in exchange for their “maintenance.” With these reformers, the law ensured the sustainment of a gendered structure in favor of men, and only curtailed what is considered an “excess of the

transactional deal of maintenance for obedience” and its vile consequences on the lives of women (Abu-Odeh, 2004).

- The new millennium introduced a series of interconnected procedural laws that were the result of a long advocacy process by a coalition of diverse actors. The laws were formulated by three different groups, each adhering to its own agenda and priorities. First was the Family Court idea, an idea of the pioneer and lawyer Laila Takla, who had a vision of establishing a therapeutic, problem-solving, and family-friendly justice system based on a global model. The second agenda was that of a coalition of professional women who were pursuing gender reform in the family domain through a top-down, state-centered approach by lobbying for a series of new personal status laws. And third, there was the agenda of state institutions, driven by the goals of development and governance (Al-Sharmani, 2017, pp. 38-39).
- On January 26, 2000, the Egyptian parliament adopted the Personal Status Law No.1 of 2000, “The Law for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters.”¹ The law was designed to make the procedures of PSL cases more efficient, with the aim to minimize the time and financial resources spent by litigants, who were primarily women. The Law did not deviate from the established jurisprudence, or offer substantive change, and accordingly did not meet the expectations of those waiting for change for so long. However, it did introduce significant articles, including:
 1. Article 20 on non-fault-based divorce (*khul*). One of the most important and controversial articles to be added to the PSL, *khul* is consistent with Islamic jurisprudence, and allows women the right to divorce without grounds and without the consent of either the husband or the judge in exchange for returning the dowry to her husband and giving up all post-divorce financial rights.

2. Article 17, which grants women, who were under unregistered marriage (*urfi*), the right to seek divorce. Prior to the law, women under *urfi* marriages had no access to justice, in all issues related to marriage including spousal maintenance, alimony, and inheritance.
- In the same year, Personal Status Law No. 10 was passed. The law introduced new family courts. “The thought behind the new courts is to empower disputants to determine their contentions through lawful instruments that are non-ill-disposed, family-accommodating, economical and productive” (Al-Sharmani, 2017, pp. 33-34).
 - In the same year, Personal Status Law No. 11 was passed, which created the Family Security Fund. The role of the fund is to provide spousal and child maintenance to vulnerable plaintiffs, as well as take the responsibility of collecting maintenance, as per court order, from husbands and fathers.
 - Similarly, in 2000, the Ministry of Justice produced a new marriage contract with marked blanks, which allows couples to put their conditions for the marriage contractually.
 - In 2005, Personal Status Law No. 4 was passed. This law gives divorced women the right of custody to her children until the age of 15.
 - In the absence of gender-based reforms in PSLs, neither the new courts system nor the new laws succeeded in bringing gender justice to the system.² The new millennium reform efforts, which focused only on procedural, not substantive, reforms, were part of the long strategy by the Egyptian State concerning the reform of the PSL to preserve the status quo. The adapted strategy attempts to curtail the conspicuously brutal aspects of a husband’s and a father’s power without dismantling the hierarchy between the spouses or between father and daughter.

Substantive Reform: The Case for Islamic Feminism

Egypt has a rich history of activism that has utilized an Islamic conceptual framework to challenge the gender hierarchy that positions the private sphere under the realm of traditional Islamic jurisprudence. In this section, we will argue that this rich history of Islamic modernism, which implies all activism that uses Islam as a conceptual framework for change, can be utilized today and built upon through the work of Islamic feminists.

As outlined in the previous section, Islamic modernism in Egypt, led by Mohammed Abduh and sustained by his legacy, challenged the understanding of marital relationships in traditional Islamic jurisprudence, and the exercise of this jurisprudence on family life. Abduh invoked certain Islamic principles, specifically mercy, compassion, affection, tranquility, and justice, as the foundational concepts of the marital relationship. Furthermore, the Egyptian feminist movement has long used an Islamic framework to advocate for gender justice. For example, Malak Hifni Nasif established one of the founding discourses of feminism that emerged in Egypt and the region. Nasif advocated for the advancement of girls and women, from decolonial, anti-Western, and Islamic angles (Yousef, 2011). The same reform was adopted by activists of this century. According to Al-Sharmani's (2017) analysis, the significance of these reform actors and modernist thinkers lay in their making visible—in a more vibrant and consistent way—the linkage between the reform of religious discourse and knowledge, and the reform of gender equality and rights. This linkage is particularly relevant not only for the goal to substantively reform the existing *fiqh*-based family law, but for the reform of socio-religious norms that shape gender relations and rights in the lives of individual women and men (Al-Sharmani, 2017, pp. 160-161).

Egyptian non-governmental organization (NGO) activists started to articulate a reformative discourse based on their understanding of the Qur'an and human rights, after witnessing the suffering that the PSL caused women and their families. The resulting discourse is a positive move toward challenging the reigning jurisprudence. Conversely, its lack of coherence is due, firstly, to the absence of clarity regarding how this discourse relates to relevant Qur'anic scripture, which

leaves many methodological and epistemological questions unanswered, and secondly, to the simultaneous use of both the human rights concept of equality and the Islamic jurisprudence concept of equity (Sharafeldin, 2015).

These gaps in the discourse can be addressed by Islamic feminism. Islamic feminism, the work of Muslim women scholars from across the globe, consists of scholarship, “that critically revisit[s] and unpack[s] dominant religious interpretations that are patriarchal and discriminatory against women, and aim[s] to produce new knowledge that makes the case for gender equality and justice from within an Islamic paradigm” (Al-Sharmani, 2014, p. 89).

Even though many of these scholars have focused on bringing greater gender justice to Muslim family laws, the creators of this knowledge see their work as a transformative justice movement for all. Ziba Mir-Hosseini, a scholar and one of the pioneers of Islamic feminism, stated:

I think the issue of gender relations within the family—which is what personal laws are all about – actually relates to the core of power in society at a broader level. Since the family is the basic unit of society, only if there is justice and democracy within the family can you possibly have justice and democracy in the wider society. In other words, the key to democratizing the whole society is to democratize its basic unit, the family, and for this legal reform is crucial. (Sikand, 2010, para. 30)

The agenda of gender justice, shifting in accordance with the political leadership in Egypt, calls for the need for an ethical feminist movement to bring justice for all. This ethical feminist movement stands against institutional patriarchy and political opportunism and authoritarianism, and speaks to poor, marginalized, and disempowered women (Abou Bakr, 2015). Islamic feminism can, according to Omaira Abou Bakr (2015), constitute this ethical movement, and she invokes, like Mohammed Abduh, the principles of Islam to be defining elements for change:

An Islamic feminist vision is able to underline the convergence of both theological and political authoritarian patriarchy through conceptualizing and invoking specific, relevant, ethical tenets: resisting all forms of *zulm* (injustice), *istikbar* (pride), and *baghy/tughian* (transgression) for the pursuit of a holistic *‘adl* (justice). These are more than simply the equivalent Arabic words for these meanings, as the systematic recurring of each in specific moral contexts throughout the Qur’an forms together a thematic and conceptual cluster of an Islamic ethos and imperative [...] the above-mentioned Qur’anic concepts and themes...can be applied to both political tyranny and patriarchal injustice directed at women. (pp. 200–201)

Abou Bakr references the work of Amina Wadud, a philosopher and another pioneer of Islamic feminism, on the Islamic concept of *tawhid*, or the uniqueness of God in Islam, in erasing patriarchy, and a cornerstone in formulating gender justice and equality under an Islamic framework of action. In accordance with Wadud, “the overarching concept *tawhid*, or the uniqueness of Allah, forms a trajectory organizing Islamic social, economic, moral, spiritual, and political systems” (Abou Bakr, 2015, p. 201). Thus, the concept of *tawhid* can be utilized in deconstructing the nexus between patriarchal public-private concepts, like men’s *wilayah* (guardianship) and *qiwamah* (authority) over women. With their innovative approach to Holy Islamic texts, Islamic feminism can be a strong tool not only in transforming the change-resistant Personal Status Law (the legal framework of the private sphere), but also more importantly in weakening the foundation of a legal and political system of injustice and violence.

Recommendations

In close collaboration with Egypt’s civil society:

The **Egyptian Parliament** is recommended to assign the legislative committee to propose a draft law for the PSL and to include it on the legal agenda of the parliament. At the same time, there

should be hearing sessions for the initiatives and the organizations that are working on changing the law, as well as creating a social dialogue through the media.

- These laws should be derived from the legalization of philosophy and principles of Islamic feminism of equality and justice and should regard women as citizens in this country who are equal to men.
- Call for a drastic review of the legal vision that is based on the concepts of *qiwamah* and *wilayah*, making use of the knowledge and information that has been presented by experts and Islamic feminist institutions.
- Include Islamic feminists—scholars and activists—in the building of a real partnership with the human and women’s rights Egyptian community to elaborate a vision of the law and draft its texts.

The **legal and justice system** is recommended to conduct a comprehensive revision of jurisprudence of PSL cases in compliance with the principles and philosophy of Islamic feminism. It is also recommended to train justice providers and work on Family Court cases, in order to eliminate gender bias when handling Family Court cases, under the framework of Islamic feminism. The trainings should include:

- Members of the Family Courts’ judiciary, as well as the Prosecutors who consult the Court, and other Court personnel, who provide legal, social, and psychological assistance to claimants.
- The forensic division, particularly those who are responsible for cases of domestic and sexual violence.
- The police force, particularly those who are responsible for cases of domestic and sexual violence, custody, and child abduction.
- Any specialized law enforcement task force, which enforces Family Court cases' decisions.

The Ministries of Education, Culture and Al Azhar are recommended to:

- Increase social awareness on the necessity of building a new marriage model based on equality and true partnership, instead of *qiwamah*, *wilayah*, and *ta'a*, based on the principles of the constitution, human rights, and Islamic feminism.
- Based on the rich knowledge of Islamic feminism, open a dialogue on this new marriage model with different sectors of society, particularly Al Azhar, civil society, legislators, and the judiciary, while ensuring appropriate representation of disadvantaged groups.

¹ “The Law for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters,” Personal Status Law No. 2000. See Al-Sharmani (2017), pp. 34–33 for an excellent summary of the Law, and the laws that followed.

² See Al-Sharmani’s (2017) analysis on the failure of the laws and the new courts of the 2000s to produce any of their intended goals, specifically gender equality, to the justice system (pp. 110–108, 141–142, 144–146). See also Human Rights Watch (December–November 2004).

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